

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00570/2016

Wednesday, this the 25th day of July, 2018

CORAM:

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

1. S.Jayakumar,
S/o.Surendran, aged 37
residing at Madathil House
Ezhakkaranad P.O, Puthencruz via
Ernakulam District
Pin – 682 308
2. Binil.B
S/o.Babu.G, aged 33 years
residing at Kripa Sadan, Near Chaleppellil
NAD P.O, Alwaye, Ernakulam District
Pin – 683 563

..... **Applicants**

(By Advocate – Mr. N.Radhakrishnan)

V e r s u s

1. Union of India,
represented by the Secretary to Government of India
Ministry of Defence, New Delhi – 110 001
2. The Flag Officer Commanding in Chief
Southern Naval Command
Naval Base, Kochi – 682 004
3. The Chief Staff Officer (Personnel and Administration)
Southern Naval Command, Kochi – 682 004

..... **Respondents**

(By Advocate – Mr.N.Anilkumar,Sr.PCGC(R))

This Original Application having been heard and reserved for orders on 20.07.2018, the Tribunal on 25.07.2018 delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member:

This Original Application has been filed by the applicants having

aggrieved by the action of the Respondents in not mentioning the period of | Annexure A.3 Rank List and the method of appointment in the post of Dhobi as per Employment Notification by Southern Naval Command, Kochi.

2. The brief facts leading the applicants to file the present O.A. are that they were candidates for appointment for selection to the above post. After written test, practical test & interview, the respondents published Select List as well as Reserve List. In the absence of information regarding the period of Rank List and the method of appointment from the Reserve List the right of the candidates included in the Reserve List for getting appointment will be defeated. Now there are vacancies in the post of Dhobi. Applicants are next eligible candidates to be appointed in the post of Dhobi included in General and SCT category Reserve Lists. Expiry date of the Rank List was not mentioned. Now there are vacancies to be filled in the post of Dhobi. Hence it is submitted and prayed for by the applicants to give appropriate direction to the respondents to make appointments in the post of Dhobi from the Reserve Rank List. Applicants seek the following reliefs:

“ i) To declare that the applicants are entitled to get appointment in the post of Dhobi from Annexure A1d & A2 Rank Lists.

ii) To give appropriate direction to the respondents to make appointments in the post of Dhobi from Annexure A1 & A2 Rank Lists.

iii) To direct the respondents to declare and publish the period of Rank List and the method of appointment for selection to the post of Dhobi as per Employment Notification by the Respondents.

iv) Grant such other reliefs as may be prayed for and the court may deem fit to grant. “

2. Learned counsel for the applicant submitted that the Southern Naval Command, Kochi invited applications for appointment to the post of Dhobi/MTS in the Scale of Pay of Rs. 5200-20200 in June, 2015. The

qualification for the above post is Matriculation or equivalent. As per the notification there are 8 vacancies under different categories viz. 2 in General -, 4 in OBC and 2 in SC. The applicants applied for the post and attended written test, practical test and interview and the Annexure A3 Rank List was published in December 2015 consisting of Select List as well as Reserve List. It is submitted on behalf of the applicant that 12 candidates were included in the Select List and 12 candidates were included in the Reserved List. To the knowledge of these applicants, 12 candidates included in the Select List were given employment. Regarding the future or existing vacancies no information was provided. According to the applicants the date of expiry of Rank List should have been mentioned at the time of publishing the Rank List. This would have enabled the candidates to get employment according to their turn in the Reserve List. It is submitted that the very purpose of keeping a Reserve List is defeated as the above information of validity of the Rank List and method of appointment was not mentioned.

3. It is submitted that the applicants came to know that there are vacancies in the post of Dhobi. It is contended that by ignoring the claim of the applicants the respondents are taking steps for making fresh appointments in the post of Dhobi.

4. Notices were issued to the Respondents and they have filed the reply statement. It is admitted by the respondents in their reply that the applicants had applied for the post of Dhobi and attended the written test on 08. Dec 15 and were placed in the Annexure A3 reserve list. The advertisement for the post of Dhobi was published in Annexure R1 Employment News and in

accordance with the powers vested in the Competent Authority which is clarified at Sr. No.5 in the 'note' section of R.1 that the vacancies of Dhobi were subsequently increased to 9 vide corrigendum issued in Mathrubhumi and The Hindu daily dated 14 & 27 Aug15 respectively. Later on these vacancies were increased to 12 vide corrigendum published in The Hindu Newspaper on 22nd October 2015. It is further submitted that competent authorities have the power to increase the number of vacancies before the conduct of examination. As the result thereof 12 candidates from select list were appointed against the total 12 number of vacancies published. There was no requirement to operate the reserve list since all the candidates from the select list had reported for appointment.

5. Department of Personnel & Training OM No. 41019/18/97-Estt.(B) dated 13 Jun 2000, a request for nomination from the reserve list clearly brings out that where selection has been made through UPSC a request for nomination from reserve list if any, may be made to the UPSC in the event of occurrence of vacancies caused by non-joining of the candidates within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies within a period of one year from the date of his joining, if fresh panel is not available by then.

6. We have heard the learned counsel appearing on both sides and considered the rival submissions and carefully gone through the pleadings and case laws cited.

7. R.5 DOPT OM brought out the same principle to be followed by other recruiting agencies/authorities. In Annexure R.6 copy of the order dated 17.11.2011 of CAT Principal Bench, New Delhi in O.A. No. 1000/2010 has

relied on the judgment of the Hon'ble Apex Court in ***Rakhi Ray & Ors v. High Court of Delhi & Ors (2010) 1 SCC (L&S) 652*** laid down the law that -

“the process of selection comes to an end with the filling up of notified vacancies, and a waiting list cannot be used as a reservoir to fill up vacancies coming into existence after issuance of the notification/advertisement. Further it was held that appointments made beyond the number of vacancies advertised is without jurisdiction and is violative of Articles 14 and 16 of the Constitution of India.”

In its subsequent judgement in ***State of Orissa & Anr v. Rajkishore Nanda & Ors [(2010) 6 SCC 777]*** the Apex Court has reiterated the law that -

“select list cannot be treated as a perpetual reservoir for purposes of appointment. It is held that the Public Service Commission cannot recommend more names than the number of vacancies advertised or mentioned in the requisition. Any appointments in excess of the said principle would be arbitrary as it would deprive candidate who were not eligible to the appointment to the posts on the last date of submission of applications mentioned in the advertisement and who became eligible for appointment thereafter of the opportunity of being considered for appointment on the additional posts. If the said additional posts are advertised subsequently, those who became eligible for appointment in the meanwhile would be entitled to apply for the same.”

8. The Hon'ble Apex Court in ***Rakhi Ray & Ors v. High Court of Delhi & Ors (supra)*** held that Select List cannot be treated as permanent. The Reserve list is made to meet the situation when candidate selected not opted join then candidate in the Reserve List/Panel can be given offer of appointment and it would be discriminatory for those candidates who are eligible after the last date of the submission of Application and became eligible thereafter. The process of selection comes to an end when all selected candidates joins the post. Subsequent vacancies cannot be given to Reserve List candidate unless it is otherwise contended in the advertisement itself which is not the case here.

9. The law on the subject is very clear that in case all the vacancies advertised are filled up then there is no question to touch the reserve list for appointment as it amounts to discrimination under the article 14 and 16 of the Constitution of India. If we apply this principle on the present application as 12 vacancies advertised have duly been filled up by the respondents and there is no need for taking any candidate from the reserve list.

10. In view of the above settled legal position we are of the view that the present original application fails having no merit. The applicants have no legal right to get appointment despite having put their names in reserved list and the same is dismissed accordingly.

11. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

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| Annexure A-1 | - | True copy of the Written Test, Practical Test and Interview Cards of the 1 st applicant |
| Annexure A-2 | - | True copy of the Written Test, Practical Test and Interview Cards of the 2 nd applicant |
| Annexure A-3 | - | True copy of the Rank List published in December, 2015 |
| Annexure R-1 | - | Advertisement in Employment News 20-26 Jun 15 |
| Annexure R-2 | - | Corrigendum published in Mathrubhumi daily dated 14 Aug 15 |
| Annexure R-3 | - | Corrigendum published in the Hind daily dated 27 Aug 15 |
| Annexure R-4 | - | Corrigendum published in the Hindu daily dated 22 Oct 15 |
| Annexure R-5 | - | DOP&T OM No.41019/18/97-Estt.(B) dated 13 Jun 2000 |
| Annexure R-6 | - | Hon'ble CAT Principal Bench New Delhi Order dated 17 Nov 11 |
| Annexure R-7 | - | Ministry of Defence Guidelines
No.CMPR/1029/RT/POLICY dated 24 Sep 15 |

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